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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

314-619

No. 1029 74

MRS. LOUISE HARRIS MOORE,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

J. C. MURPHY,
Counsel for Petitioner.

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No. 1029

MRS. LOUISE HARRIS MOORE,

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vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI.

May it Please the Court:

The petition of Mrs. Louise Harris Moore respectfully shows to this Honorable Court:

A.

Statement of Matters Involved.

Petitioner brought suit in the Court of Claims of the United States for the recovery of individual income taxes assessed against and collected from her for the year 1932. Petitioner had no taxable net income for that year, but on the contrary had a loss (R. 4). Petitioner's husband, H. Clay Moore, had a taxable net income and elected to file what he called a joint income tax return, in which he in-

cluded the items of gross income and the losses sustained by petitioner. The tax return was not signed by petitioner, but was signed only by petitioner's husband (R. 4). The amount of tax shown on the return, together with the subsequently determined deficiency, was first assessed against H. Clay Moore, and upon his failure to pay the assessments, the original tax and the deficiency in the sum of $3,737.52 was thereupon assessed against and collected from petitioner (R. 6).

B.

Questions Presented.

Can the income tax due, under Revenue Act of 1932 by a husband on his income, legally be assessed against and collected from his wife where the husband filed a joint income tax return?

C.

Relevant Parts of Applicable Statutes.

The immediately applicable portion of the Revenue Act of 1932, 47 Stat. 169, 188, is as follows:

> "Sec. 51. Individual Returns.
>
> (a) Requirement.—The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this title—
>
> (1) Every individual having a net income for the taxable year of $1,000 or over, if single, or if married and not living with husband or wife;
>
> (2) Every individual having a net income for the taxable year of $2,500.00 or over, if married and living with husband or wife; and,
>
> (3) Every individual having a gross income for the taxable year of $5,000 or over, regardless of the amount of his net income.

(b) Husband and Wife.—If a husband and wife living together have an aggregate net income for the taxable year of $2,500 or over, or an aggregate gross income for such year of $5,000 or over—

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income."

The Revenue Act of 1932 did not in terms authorize the assessment of deficiencies or tax against the wife, where the tax is due on the husband's income.

D.

Reasons Relied Upon for Allowance of Writ.

It is believed the petition should be granted for the following reasons:

(a) The decision of the court below in holding that the income tax due on the husband's income was legally assessed against and collected from petitioner is in conflict with the decisions of the Circuit Courts of Appeals for the second, sixth, seventh and ninth circuits.

(b) The Court below has decided an important question of Federal law, which has not been but should be settled by this Court.

(c) The Court below has decided Federal questions probably in conflict with applicable decisions of this Court in the following particulars:

(1) It has resolved the doubt in a taxing statute in favor of the tax, and against the taxpayer.

(2) It has given the applicable provision of the statute a construction which would probably make it unconstitutional, in that it would probably violate the due process

clause of the Fifth Amendment, and would be a direct tax without apportionment.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Claims of the United States, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 44578, Mrs. Louise Harris Moore (Mrs. H. Clay Moore) *v.* United States, and that the said judgment of the Court of Claims of the United States be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

MRS. LOUISE HARRIS MOORE,
By J. C. MURPHY,
Counsel for Petitioner.

803 Citz. & Sou. Bank Bldg.,
Atlanta, Georgia.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1029

MRS. LOUISE HARRIS MOORE,

Petitioner,

vs.

THE UNITED STATES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Court Below.

The opinion of the court below is reported in 37 Fed. Sup. 137.

II.

Jurisdiction.

1. It is believed the Court has jurisdiction under the following statutory provision:

28 U. S. C. A. 288 (Feb. 13, 1925, c. 229, Sec. 3, 43 Stat. 939).

2. The judgment dismissing the petition was entered March 3rd, 1941 (R. 12).

3. The decision involves a construction of Federal Law.

4. It is believed jurisdiction to review the decision is sustained by the case of *Sun Shipbuilding Company* v. *U. S.*, 271 U. S. 96.

III.

Statement of the Case.

A concise statement of the case is in the petition for certiorari. It is adopted and for brevity it is not repeated.

IV.

Specification of Errors.

1. The court erred in finding and holding that the word "Joint" in Section 51B (2), Revenue Act of 1932 (47 Stat. 169, 188), means that both spouses are liable for the resulting tax.

2. The court erred in holding that the tax assessed against petitioner is authorized by law.

3. The court erred in finding and holding that petitioner is not entitled to recover the amount paid, and in dismissing her petition.

V.

Argument.

As to petitioner, the amount assessed and collected is not a tax. The Revenue Act of 1932 contains no provisions specifically authorizing the assessment of the tax or the deficiency against petitioner. The joint income tax return was filed by the husband and not by petitioner.

The court below concludes that petitioner could not allow her husband to file a joint return and include her gross

income and losses without becoming liable for the tax. It concludes that the word "Joint", in the context of the quoted part of the applicable statute, is that both spouses should be liable for the resulting tax, independent of the income of either spouse. It is obvious that the court below has based its decision upon the language of this Honorable Court in the case of *Taft* v. *Helvering*, 311 U. S. ——, 61 S. Ct. 244 (Decided December 9, 1940), in which this Court held that the joint return is to be treated as a "taxable unit" as though it were made by a "single individual", in the computation of the tax. The question of "taxable unit" as applied to the assessment and collection of the tax was not presented.

The decision below is in conflict with decisions of the United States Circuit Courts of Appeals in the Second, Sixth, Seventh and Ninth Circuits in the following cases:

Cole v. *Commissioner* (C. C. A. 9), 81 F. (2d) 485;
Crowe v. *Commissioner* (C. C. A. 7), 86 F. (2d) 796;
Commissioner v. *Rabenold* (C. C. A. 2), 108 F. (2d) 639, 641;
Sachs v. *Commissioner* (C. C. A. 6), 111 F. (2d) 648.

The question here presented is an important question of Federal law which has not been settled by this Court, and which we submit should be settled.

The decision below is probably in conflict with applicable decisions of this Court on general principles of law. In the case of *Gould* v. *Gould*, 245 U. S. 151, this Court held that doubt in taxing statutes should be resolved in favor of the taxpayer and against the tax. The authority to make the assessment against the wife must be implied from the context of the statute.

It is thought that the construction given the applicable Section of the statute by the court below would probably make it unconstitutional, in that it would authorize the

assessment of a tax due on one person's income against another. As to petitioner, if the amount be a tax, it would be direct taxation without apportionment, because petitioner had no taxable income. *Pollock* v. *Farmers Loan and Trust Company,* 157 U. S. 429.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers to review the decision of the Court of Claims of the United States and finally reverse it.

J. C. Murphy,
Counsel for Petitioner.

803 Citz. & Sou. Bank Building,
Atlanta, Georgia.

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 74

MRS. LOUISE HARRIS MOORE, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

This case raises the question whether the Commissioner of Internal Revenue may assess an income tax deficiency against either spouse for the year 1932 where husband and wife have filed joint returns, or, in other words, whether spouses who have filed joint returns are jointly and severally liable for the tax. The holding of the court below that either spouse may be called upon to pay the tax is, as asserted by petitioner, in conflict with *Cole* v. *Commissioner,* 81 F. (2d) 485 (C. C. A. 9th); *Crowe* v. *Commissioner,* 86 F. (2d) 796 (C. C. A. 7th); *Commissioner* v. *Rabenold,* 108 F. (2d) 639 (C. C. A. 2d); *Sachs* v. *Commissioner,* 111 F. (2d) 648 (C. C. A. 6th).

Notwithstanding the conflict, however, this Court would be justified in denying certiorari. Congress, recognizing the incorrectness of the result reached in those cases, made a clarifying change in Section 51 (b) of the Revenue Act of 1938, expressly providing for joint and several liability. There are few, if any, cases still pending which raise this question for the years prior to 1938. Moreover, the subsequent decisions of this Court in *Helvering* v. *Janney,* 311 U. S. 189, and *Taft* v. *Helvering,* 311 U. S. 195, go far towards depriving the earlier conflicting decisions of controlling effect even in the circuits in which they were decided.

In these circumstances, it would seem appropriate that the petition should be denied.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

JUNE 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941

In the Supreme Court of the United States

OCTOBER TERM, 1941

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

In the Government's memorandum heretofore filed in this case, it was suggested that although a conflict existed the Court would be justified in denying certiorari, since the statute had been clarified in 1938 and since there were few if any cases pending which involved prior years.

In response to our request the Treasury has since examined its assessment lists for tax years prior to 1938, and has found that on March 31, 1941, there were approximately 869 assessments in the joint names of husband and wife outstanding for pre-

1938 tax years involving an aggregate tax liability of $2,793,649.86. Although it is difficult to determine how many of those assessments may result in litigation raising the question of the instant case, it does seem likely that there is sufficient potential litigation to warrant granting the writ here.

Respectfully,

CHARLES FAHY,
Acting Solicitor General.

JULY 1941.

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v.

THE UNITED STATES.

On Petition for Writ of Certiorari to the Court of Claims.

PETITION FOR REHEARING.

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v.

THE UNITED STATES.

On Petition for Writ of Certiorari to the Court of Claims.

PETITION FOR REHEARING.

Comes now the above named petitioner, Mrs. Louise Harris Moore, and presents this her petition for a rehearing of the entitled cause, and in support thereof respectfully shows:

An order denying the petition for a writ of certiorari was entered by the Court October 13, 1941.

Petitioner was required to pay the income taxes due on her husband's income out of her private personal estate. The question presented is one of public importance. The supplemental memorandum filed for the United States dis-

closes that eight hundred sixty-nine assessments in the joint names of husbands and wives are outstanding for pre-1938 tax years involving an aggregate tax liability of $2,793,649.86.

In addition to the decisions by the United States Circuit Courts of Appeals cited in the brief in support of the petition for a writ of certiorari, it is believed that the decision below conflicts with the decision of this Court in the case of *Hoeper* v. *Tax Commission of Wisconsin,* 284 U. S. 206.

This Honorable Court in the case of *Heiner, Collector,* v. *Donnan,* 285 U. S. 312, discussed the decision in the following language:

> "In Hoeper v. Tax Commission, 284 U. S. 206, this court had before it for consideration a statute of Wisconsin which provided that in computing the amount of income taxes payable by persons residing together as members of a family, the income of the wife would be added to that of the husband and assessed to and payable by him. We held that, since in law and in fact the wife's income was her separate property, the state was without power to measure his tax in part by the income of his wife."

The Court's attention is further directed to the decision of this Honorable Court in the case of *Heiner, Collector,* v. *Donnan,* 285 U. S. 312, in which the Court said:

> "This is to measure the tax on A's property by imputing to it in part the value of the property of B, a result which both the Schlesinger and the Hoeper cases condemn as arbitrary and as denial of due process of law. Such exaction is not taxation but spoliation. 'It is not taxation that governments should take from one the profits and gains of another. That is taxation which compels one to pay for the support of the government from his own gains and of his own property.' United States v. Baltimore, and O. R. Co., 17 Wall. 322, 326."

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the judg-

ment of the United States Court of Claims be, upon further consideration, reversed.

Respectfully submitted,

J. C. MURPHY,
Counsel for Petitioner.

803 Citizens and Southern Bank Bldg.,
Atlanta, Georgia.

CERTIFICATE OF COUNSEL.

I, J. C. MURPHY, counsel for the above named petitioner, Mrs. Louise Harris Moore, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

J. C. MURPHY,
Counsel for Petitioner.